IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 14955 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASWANT SINGH BACHCHAT SINGH KALASI - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR KIRIT I PATEL for Applicant(s) : 1,
MR MR MENGDEY, APP for Respondent(s) : 1,
MR VIMAL A PUROHIT for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/10/2007

ORAL JUDGMENT

The petitioner herein has prayed for quashing of criminal case No.158 of 2002 pending before the court of learned Metropolitan Magistrate, Court No.15,

Ahmedabad.

2. The case pertains to an alleged offence having been committed by the petitioner punishable under section 138 of the Negotiable Instruments Act.

3. The petitioner was the original defendant in Civil Suit No.4640/88 filed by the complainant. It is not in dispute that the said suit came to be decreed by the order dated 11.4.2000 and the petitioner had to pay certain sum to the complainant, i.e. respondent No.2. Respondent No.2, therefore, filed execution proceedings. The petitioner, therefore, under duress paid a sum of Rs.15,000/- in cash and also issued a cheque of Rs.35,000/- dated 9.11.2001 drawn on Bank of India. Since upon presentation the cheque was not realized, after issuance of notice, the complainant lodged the above mentioned complaint against the petitioner.

4. The case of the petitioner, however, is that subsequent to the issuance of the said cheque, he had filed First Appeal before this Court being First Appeal No.302/02 which came to be admitted by this Court and in Civil Application for stay, Division Bench of this Court on 18.4.2002, after hearing the advocates for both sides, stayed the execution of the impugned decree on the condition that the appellant deposits with the Trial Court an aggregate amount of Rs.50,000/- within eight weeks from the date of the order. It is not in dispute that the

petitioner has fulfilled the said condition and deposited the amount as directed.

5. This being the case, the petitioner was no longer required to pay further amount of Rs.35,000/- covered under the bounced cheque. The fact of the petitioner having issued cheque and not being able to make payment for the same must have been available before this Court when the petitioner was granted stay on condition of deposit of Rs.50,000/-. In that view of the matter and on account of subsequent developments, I find that the entire sting of petitioner issuing cheque and bouncing thereof is taken away. Surely, it was not the intention of this Court to require the petitioner to deposit a sum of Rs.50,000/- as also to deposit Rs.35,000/- covered under the said cheque.

6. Thus, taking into account the totality of the facts and circumstances of the case and the intention of the Division Bench in protecting the petitioner during the pendency of the appeal on a condition, which admittedly, the petitioner has fulfilled, I find that no useful purpose will be served in permitting the learned Magistrate to proceed further with the said complaint. The impugned complaint is therefore quashed. Rule is made absolute accordingly.

(Akil Kureshi, J.)

(vjn)